

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DOROTHY MARTIN,

Plaintiff,

v.

**Civil Action No. 3:06-CV-142
(JUDGE BAILEY)**

BERKELEY COUNTY COMMISSION,

Defendant.

ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

This matter is now before the Court for consideration of the Defendant’s Motion for Summary Judgment (Doc. 12). Having been fully briefed, the motion is now ripe for decision. For the reasons stated below, Defendant’s Motion for Summary Judgment (Doc. 12) is **DENIED**.

This is an action brought by a former employee of the Berkeley County Assessor’s Office seeking redress for an alleged violation of the Family and Medical Leave Act, 29 U.S.C. § 2601, et seq. (“FMLA”). In its Motion, the Berkeley County Commission asserts that the plaintiff was not an employee of the County Commission, but rather an employee of the Assessor’s Office, which has fewer employees than required to trigger the application of the FMLA.

This Court finds the argument unavailing for the following reasons:

1. The plaintiff’s paycheck was issued by the Berkeley County Commission;
2. During her employment orientation, the plaintiff was provided with a copy of the employee handbook issued by the Berkeley County Commission;
3. The Berkeley County Commission employee handbook provided that persons employed in the Assessor’s Office were covered by the handbook;
4. The plaintiff’s benefit package was provided by the Berkeley County Commission;

5. Other employees of the Assessor's Office were provided with FMLA leave during the plaintiff's employment;

6. It would appear that the County Commission is asserting that its Assessor's Office is some sort of sub-county governmental agency. This is not supported by the regulations found in 29 C.F.R. § 825.108; and

7. The County Commission's reliance on West Virginia Code, § 11-1C-8 is misplaced. That section provides additional funding for the hiring of personnel due to the increased duties of valuation imposed by Article 1C. The funds are paid to the Sheriff of each county and are to be used only for the purposes of each assessor's office. Nothing in the section mandates that such employees are not employees of the respective counties.

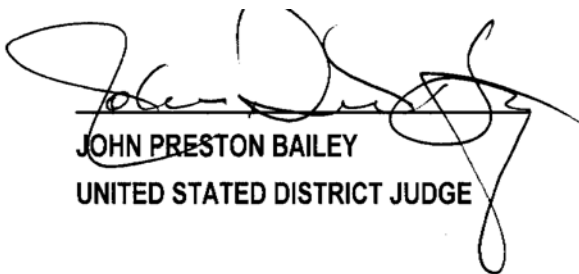
Based upon the foregoing, this Court finds that, as a matter of law, the plaintiff was an employee of the Berkeley County Commission and was entitled to the benefit of the FMLA.

Accordingly, **Defendant's Motion for Summary Judgment (Doc. 12)** is **DENIED**.

It is so **ORDERED**.

The Clerk is directed to transmit a copy of this Order to all counsel of record herein.

DATED: December 14, 2007.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE